

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN
and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER,
ALEXBAY, LLC f/k/a LESTER EBER, LLC,
CANANDAIGUA NATIONAL CORPORATION
d/b/a CANANDAIGUA NATIONAL BANK
AND TRUST, ESTATE OF ELLIOT
W. GUMAER, JR., EBER BROS. & CO., INC.,
EBER BROS. WINE AND LIQUOR CORP.,
EBER BROS. WINE & LIQUOR METRO, INC.,
EBER CONNECTICUT, LLC, and
WENDY EBER,

**DECLARATION OF PAUL
F. KENEALLY IN OPPOSITION
TO PLAINTIFFS' MOTION TO
DISQUALIFY**

Civil Action No.
16-CV-9517(LAK)

Defendants.

Paul F. Keneally, Esq., an attorney admitted to practice law before this Court, states and declares the following under the penalty of perjury:

1. I am a member of Underberg & Kessler LLP, attorneys for Defendants Lester Eber, Alexbay, LLC f/k/a Lester Eber LLC, Eber Bros. & Co., Inc., Eber Bros. Wine and Liquor Corp., Eber Bros. Wine & Liquor Metro, Inc. Eber-Connecticut, LLC and Wendy Eber (collectively, the "Eber Defendants"). As such, I am fully familiar with all pleadings and prior proceedings had herein.

2. I submit this Declaration and Exhibits in opposition to Plaintiffs' Motion to Disqualify Underberg & Kessler LLP from representing Eber Bros. & Co., Inc. and Eber Bros. Wine and Liquor Corporation.

3. Attached are the following Exhibits referenced in the accompanying Eber Defendants' Memorandum of Law:

- Exhibit A: Eber Organizational Chart Pre-2012
- Exhibit B: Hon. Matthew A. Rosenbaum Order dated May 11, 2012
- Exhibit C: Summary of Lester Eber's payments for liabilities of EBWLC
- Exhibit D: UCC Financing Statements
- Exhibit E: Promissory Note dated October 1, 2002
- Exhibit F: Amended and Restated Promissory Note dated March 13, 2006
- Exhibit G: Line of Credit Note October 2009
- Exhibit H: Guaranty and Security Agreement both dated February 26, 2010
- Exhibit I: Amended and Restated Security Agreement dated February 11, 2011
- Exhibit J: Debt Assumption Agreement dated February 11, 2011
- Exhibit K: 2010 letters from Lester Eber to Sally Kleeberg and Audrey Hays
- Exhibit L: Meeting Minutes dated August 18, 2011 for the Trust of Allen Eber
- Exhibit M: Assignment of Notes and Security Agreements both dated January 18, 2012
- Exhibit N: Alexbay, LLC's Notice pursuant to New York UCC 9-620
- Exhibit O: Settlement Agreement dated February 24, 2017 with PBGC

I declare under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct.

Dated: November 30, 2018
Rochester, New York

/s/ Paul F. Keneally
Paul F. Keneally